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BOR Policy 2.5.2 Motion

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Submitted By

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Approved by the Senate:

Not Approved by the Senate:

Approved by the President:

Not Approved by the President:

BOR Policy 2.5.2 Motion

Submitted by Michael Moore
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478-0211

2/14/2014

Motion(s): We move that President Keel contact the Chancellor of the University System of Georgia and ask for an interpretation of BOR Policy 2.5.2. President Keel would report back to the Faculty Senate at its April meeting. BoR Policy 2.5.2 reads:

BOR 2.5.2 the president shall be the ex-officio chair of the faculty and may preside at meetings of the faculty. The president and/or the president's designee shall be a member of all faculties and other academic bodies within the institution. He/she shall decide all questions of jurisdiction, not otherwise defined by the Chancellor, of the several councils, faculties, and officers.

The president shall have the right to call meetings of any council, faculty, or committee at his/her institution at any time. The president shall have the power to veto any act of any council, faculty, or committee of his/her institution but, in doing so, shall transmit to the proper officer a written statement of the reason for such veto. A copy of each veto statement shall be transmitted to the Chancellor.

At those institutions that have a council, senate, assembly, or any such body, the president or the president's designee may chair such body and preside at its meetings. The president shall be the official medium of communication between the faculty and the Chancellor and between the council, senate, assembly, or any such body and the Chancellor (BoR Minutes, 1993-94, p. 239; April, 2007).

Rationale(s): As a result of our previous Senate inquiry into 2.5.2, our Associate Vice President for Legal Affairs, Maura Copeland, contacted the BOR office of Legal Affairs to discuss this rule. It turns out that in the BOR interpretation, the key word in this policy is the word "act". Since the Faculty Senate is advisory to the President, the Senate does not act; only the president does. Therefore, the president cannot be in a position to veto any action by the senate, because the senate does not take action, but only provides advices. The president follows or does not follow our advice, which is not formally a veto. Therefore this provision of BOR 2.5.2 currently does not apply on our campus. Additionally, BOR counsel indicated that he is not aware of any report to the Chancellor

being made in recent memory by any institution of the system, under this provision.

As a follow up, we contacted BOR counsel to clarify the intent of a rule on presidential vetoes, to determine if presidents are never in a position to veto anything. The rule exists because while there is no council on our campus that can take action, there is--or at least there may be-- councils at other system institutions that can act. However, none as yet have been identified.

Our legal counsel, present at the senate meeting, confirmed the accuracy of the account.

However, a review of the BOR Minutes does not support the “act” justification.

First, the Chancellor is subject to similar responsibilities in BOR Policy 1.2.2. “The Chancellor shall be a member of all faculties and other USG academic bodies. He/she shall decide all questions of jurisdiction, not otherwise specifically defines, of the several councils, faculties, and officers. The Chancellor shall have the right to call meetings of any council, faculty, or committee at any time (BoR Minutes, 1986,87, p.263).

The Chancellor shall have the power to veto any act of any council, faculty, or committee of any USG institution but, in doing so, shall transmit promptly to the proper officer a written statement of the reason for such veto. A copy of each veto statement shall be transmitted to the Board of Regents (BoR Minutes, April 2007).”

Thus, using the Associate Vice President for Judicial Affairs own logic, even the Chancellor cannot “Act” apparently, only the regents.

The Board of Regents approved their first policy document in 1950 as By-Laws of the Board of Regents. From 1950 to 1993, all faculty senate minutes from every System school had to be forwarded to the Chancellor. In the 1993 revision of the BOR Policies and Procedures minutes, in the Chancellor’s own hand, he added into the minutes, under the previous section 201.0303, the Chancellor wrote: “Why not Pres veto these 2 me veto presidents.” In the revision, this became 2.5.2. It is very apparent what the intent is of these policies. The discussion in the BoR minutes also reveals that this system of checks and balances is to keep everyone informed.

A review of the BOR meeting minutes from the original By-Laws approved in 1950 and existing today reveals that the BOR indeed had set up a chain of command and review process to study any Chancellor and later Presidential vetoes of “councils, faculty or committees.”

The policies are self-contradictory if, as we are told, there are no vetoes to report because vetoes imply action.

Without the assurance of this review process, important information is denied to the Chancellor and the Regents, impeding their ability to govern the USG.

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SEC Response: The SEC agreed that the Motion regarding "BOR Policy 2.5.2" should be on the agenda of the next Senate meeting

3/10/2014 Minutes:

6. Motions Approved:

6.1. "BOR Policy 2.5.2" Michael Moore (COE): Thank you. And Mark I have an electronic version

Michael Moore (COE): I move that we move that President Keel contact the Chancellor of the University System of Georgia and ask for an interpretation of BOR Policy 2.5.2. President Keel would report back to the Faculty Senate at its April meeting.

Michael Moore (COE): Some of you may wonder why we appear to be so obsessed with 2.5.2. And it's because we see this as a much bigger issue, calling into question all of faculty governance, and the relevance of the Faculty Senate. The BOR Policies and Procedures set up a system of accountability and it is very clear on the intent.

Last fall, I went to the Board of Regents Office and started with the bound minutes from 1931, I pulled and followed the development of the policies and procedures in every set of minutes up to the most recent, the minutes are remarkably indexed by keyword and changes to policy and procedures are very clear. This is especially true all the way up to 1948, when policies and procedures were first created by the Board of Regents, and passed in 1950. At that time, the policies and procedures, Chancellor requested in these policies and procedures to review the minutes from every Faculty Senate in the System. Then in some of the 1993 minutes are handwritten notes by the Chancellor where he writes, and these are in the minutes; it makes it clear that Presidents must

pass along to him any passed motions from their Senate that the President does not accept with written justification. These are to go to the Chancellor. It is parallel to Policy 1.2.2., which holds the Chancellor to the same responsibility. And that's been in there from the beginning. There is absolutely nothing in any of the policies and procedures about only certain bodies being able to act. I asked this of an attorney and two professional staff while I was at the Board of Regents office. He looked at me like I was crazy. It's a system of accountability and oversight. It is a process. These are procedures. This particular policy was last revised and passed in 2007. The Board of Regents found no reason to change any of the wording from the creation of the 1993 policy. Are we going to follow them or not? President Keel has refused to accept seven passed motions of this body in his time here. He has reported none of these to the Chancellor. Why hasn't he done so? He has not done so because as the Senate was told this last year only the President can act. Therefore, apparently passed motions were not actually passed. Because this is an act, and the Senate cannot act, so the President never has anything to report to the Chancellor under 2.5.2., because the Senate does not do anything. This is absurd. And runs completely counter to the accountability called for in the Board of Regents' Policies. This motion asks the President simply to contact the Chancellor for his interpretation of 2.5.2. If the Chancellor says we're not going to follow this procedure, then that tells us about accountability in governance. That happened to be the case and I were on the Senate I would find another way to spend my time. What would keep any President from thinking that their Senate is irrelevant? But I don't believe really this is the intent at all. I think the intent was for the Chancellor to be informed as to what faculty governing bodies were doing on each campus. Thank you.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: Thank you. Any discussion about this matter?

Brooks Keel (President): Let me just make a comment on this, and I do fully appreciate that there's a difference of interpretation here and I appreciate that and accept that. This to me is the same motion that was made last time and you'll get the same answer. I have contacted the Chancellor's office yet again and we've gotten the exact same answer. So if you wish to take the time to pass this motion, that's fine. It is certainly your prerogative, but you'll get the same answer from me that you got the last time. And I know it's not what you want to hear, but I can't make it sound like what you want to hear. And I apologize for that.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: I'm sorry, I missed, is there someone before Maura?

Rob Pirro (CLASS): Could you tell us briefly what the answer the Chancellor was?

Maura Copeland (Associate Vice President for Legal Affairs): I do think it's important as your attorney for me to let you all know what the legal advice was here. The Board of Regents is in charge of this rule, and so it really doesn't matter what I think the rule means, or even what Dr. Keel thinks the rule means. Under Georgia law the agency that

is responsible for the rule is the agency that gets to interpret it. So when I called the Board of Regents and I did do that again recently. The answer that they gave me was that they don't feel that the President has vetoed anything, within the meaning of that rule, and so they don't expect a report on a veto, because they don't feel that a veto has taken place. And, you know, we can talk about what we think the rule means but at the end of the day under the law it doesn't really matter, what matters is what they think it means.

Jance Steirn (CLASS): In that case, I would like to have a definition of veto. I mean, I thought a veto was when we voted one way and then that vote was essentially deemed unimportant or didn't exist, so, and if, I mean, I have counted them, seven sounds like a good number, you know, if there have been seven, and the Board doesn't think any of those were vetoes, then I think we need a definition of what a veto is, so that we'll understand when we think there's a real veto.

Maura Copeland (Associate Vice President for Legal Affairs): The best that I got out of them on that was that whole if an act has taken place that the President has undone, they would consider that a veto. But in these cases they don't feel that anything has happened, it's just declining to follow a recommendation rather than vetoing an act.

Rob Pirro (CLASS): So let me ask, is it true then that the Chancellor's office is not made aware of any Presidents, I mean, a historical question here, when was the last time the Chancellor's office was made aware that a faculty motion wasn't accepted by the President? I mean, at some point in the past that must have been true, if Professor Moore's research shows, so when did that practice stop, do you know?

Maura Copeland (Associate Vice Chancellor of Legal Affairs): I do know that the rule was made in 1952, and that the current legal counsel cannot remember an instance when the Chancellor was made aware of such a situation.

Janice Steirn (CLASS): Okay, then I am totally confused. If a motion being passed is not an act, or is not being treated as an act anytime since 1950's then what is an act?

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: Maura do you want to answer that?

Maura Copeland (Associate Vice Chancellor of Legal Affairs): I think the only thing I can tell you is what I've said that, which is what they told me, is that the motions that are passed are recommendations to the President to do something. And if he declines to do that, the act itself never took place and there's no veto, and that's what they told me.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: President Keel, could I ask you a question? Did you speak actually to the Chancellor about his, or just get the advice from the Legal Office at the BOR?

Brooks Keel (President): No, we got the advice from the Legal Office at the BOR, which is where he would refer such questions on legal matters, on policy interpretations.

Janice Steirn (CLASS): Is there anything that this body can do that then would be an act, not a recommendation? I mean, if there's no such thing as an act, then of course the Chancellor's never received any communication because an act doesn't exist.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: That would be my understanding. Maura, do you have a

Jean Bartels (Provost): Sorry, I didn't mean to snap, but this body acts on curriculum all the time. That would be an act. When you approve a program to go forward, when you approve a new course, that's an act, as one example.

Janice Steirn (CLASS): Isn't that, aren't we just voting on that? I mean, I guess that I'm not sure when I'm voting when I'm voting on an act and when I'm voting on a recommendation then. I don't, I can't distinguish.

Patrick Wheaton (CLASS): In that sense, if we vote and act on curriculum, yet we've been told the last time around this body never acts, there's a contradiction. Secondly, why would the Board of Regents Policy contain language about vetoing if we don't act. Because why would you have a veto if there's nothing to veto.

Maura Copeland (Associate Vice Chancellor of Legal Affairs): I don't think anyone in this room can answer what is an act to them, and what is not. They are telling me that they don't think that Dr. Keel has vetoed anything within the meaning of the rule. And so I don't know. What they did tell me last time was that in their view Faculty Senate is a recommending body, an advisory body, and so we asked. We asked them last time, well what is not, give us an example of a committee that does act and they said they weren't aware of one off the top of their heads, but they thought there probably were some across the System who do something, who are empowered to do something without having it just be a recommendation that then has to be approved by another layer.

Michael Moore (COE): We've never brought this motion before the Senate before, as a point of clarification. But very briefly in Policy 2.52. here's what it says, "The president shall have the right to call meetings of any council, faculty, or committee at his/her institution at any time. The president shall have the power to veto any act of any council, faculty, or committee of his/her institution but, in doing so, shall transmit to the proper officer a written statement of the reason for such veto. A copy of each veto statement shall be transmitted to the Chancellor." How can that be less clear?

Bob Cook (Parliamentarian): There are many legislative bodies all over the world who have some nice rules that they choose to ignore at one point and not another, and I think this is in that category. They probably haven't repealed it because it would limit the power of the Chancellor, and some future Chancellor may wish to take advantage of it, but apparently the current Chancellor does not.

Rob Pirro (CLASS): Does anything, does anything prevent the Senate from communicating directly with the Chancellor? I mean is there rule or legal law that would prevent the Faculty Senate from sending a communication to the Chancellor?

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: Does anyone know?

Pat Humphrey (COSM): There's absolutely nothing that prevents us from communicating with the Chancellor, and when I was at the USG Faculty Council last weekend, or a week ago, he said he was perfectly willing to hear from Faculty Senates.

Brooks Keel (President): Let me just mention that you do have a representative that sits on a Council of Faculty Senate's that meeting with the Chancellor regularly. This would be a great opportunity to bring something like this up.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: Is there any further discussion of this motion? Any amendments to the motion? So, shall we vote on the motion? All in favor of this motion, say aye, Sorry, what do I, repeat the motion, yes, all in favor of the motion moving that President Keel contact the Chancellor of the University System of Georgia and ask for an interpretation of BOR Policy. 2.5.2., and report back to the Faculty Senate at its April meeting. All in favor, excuse me, yes sir.

Brooks Keel (President): We have had numerous discussions about this at several other Faculty Senate meetings. If you look at the information that was contained in this or in past meetings, you will see voluminous discussions on this. We contacted the Chancellor's office no less than three times about this and the answer's been the same, and as I say, if you want me to, want to pass a motion, you'll get the same answer. I'm sorry that you don't agree with the answer, but I can't change that answer.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: But is contacting the Legal Office the same as contacting the Chancellor himself?

Brooks Keel (President): Absolutely.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: So here we are.

Rebecca Ziegler (LIB): Could I request that when we vote on this, we have the option to decline to vote and then have the number of those who declined recorded? Abstain is what I meant. Wrong word. I meant abstain, not decline. I used the wrong word. Well, really I just wanted a called, I just want it to be made clear that some people abstain. Yes.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: All right. Okay, the way we'll handle this is we'll take a vote, ayes, nays, ayes, nays and

abstains. Is that all right? So all in favor, shall I read the motion yet again? Okay. All in favor of moving that President Keel contact the Chancellor of the University System of Georgia and ask for an interpretation of BOR Policy. 2.5.2., and report back to the Faculty Senate at its April meeting, say aye. Or raise your hand. Raise your hand, sorry. I get 9, can you hold it up higher please? Okay, sorry. Okay we have 11 ayes, nays, we have 9 nays, and abstentions, 9 abstentions. You got 11 abstentions. Can we see the abstentions, again please? Higher. So the ayes have it. Does that make it, a majority. So we had, as of 10 ayes, 9 nays, and 9 abstentions. So the motion is not approved. So and with that we will go to # 8, Unfinished Business. Any unfinished business?

7. Unfinished Business

Janice Steirn (CLASS): And being incredibly naïve about Roberts Rules, if I wanted to like make a different suggestion about the recent motion, with that be unfinished or would that be new?

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: I believe it would be unfinished.

Janice Steirn (CLASS): Okay, then I am going to ask another naïve question. Is it at all possible, I'm a little uncomfortable with I'll have my people talk to your people, is it at all possible to invite the Chancellor to a meeting of our Senate?

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: I can't see why not. I mean, we can extend an invitation, I'm sure. So, whether we can get him to actually come, he was here on campus a while back, and didn't, I actually, I addressed, I asked him something like this question and he was not really familiar with 2.5.2., so and that's, you know, he indicated interest in it, but we didn't, it didn't go anywhere. That's a, he was here in the fall. I believe.

Bob Cook (Parliamentarian): I think Pat Humphrey said that she had the opportunity to talk to the Chancellor at the combined Faculty Senate meeting, or he was present? Oftentimes in cases like this it makes more sense to do something informally. The Senate could direct Pat at, you know, it could be an opportunity to bring this issue up to the Chancellor and then get a report back, which would be a semi-formal kind of act, but jumping, you know, directly to inviting the Chancellor to discuss, you know, how he does his job is

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: He might jump at the chance. All right any other unfinished business? Does that

Rebecca Ziegler (LIB): Well, this, too, may be incredibly naïve, but it seems to me that the issue that we're concerned about is not really about the definition of veto, and the definition of act, we just want some kind of assurance that when President Keel doesn't follow our advice in our advisory role, that he will tell us his reasons and give us a chance to discuss them, and I believe

that in general he has done that, but I think it, we probably would like a policy statement that he would do that.

Brooks Keel (President): I believe there is something in the Faculty Senate Handbook that requires me to either say I accept or deny a motion within 30 days and provide some explanation as to why and I have done that, so I don't know if that would be considered a policy, and I'm not even sure where I have seen that, Robert, you may know.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: It is in the Handbook.

Brooks Keel (President): So there is a policy from that perspective if it happens, and just to set the record straight, my staff tells me there's only two motions/recommendations that flatly denied, and there are two that been deferred which actually were finally acted on and have passed, or the recommendation was carried out by the Provost's office, so not to split hairs, but those two motions and explanation was provided as to why.

Pat Humphrey (COSM): Just a point of information. The 30-day up or down from the President, that's in the University Statutes. The other thing is the University Statutes, also says that we are the official faculty advisory board/council to the President, but it also states that unless and I want to read this carefully, "with the approval of the President, the recommendations of the Faculty Senate shall be the academic policy of the University to be implemented by the administration." To me, again, maybe I'm naïve the legislature, in general, makes an act/recommends a policy, it's up to the Governor, the President, whomever, to veto or approve that policy. I don't see how our recommendation shall become policy with your approval is really different from a legislature enacting a law which doesn't become law until approved by the President or the Governor.

Brooks Keel (President): The difference is the legislature has the authority to pass bills and make acts, and then the Governor, in that case, would have to veto because it was an official "act" by a body that has the authority to do so. The legislature doesn't make any recommendations to the Governor that I'm aware of. They make their voices known by passing bills into law.

Robert Costomiris (CLASS) Chair, Senate Executive Committee and Senate Moderator: Any other unfinished business? Moving on then to new business # 9. Any new business? Not seeing any. Are there any announcements from the Vice Presidents? None that I see. Are there any announcements from the floor? Motion to adjourn? I'm sorry. Can't see out of the right hand corner of my eye.